



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 8775121

Date: JULY 21, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an entrepreneur, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYS DOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicated that he intends to continue his work as "an entrepreneur – specifically impacting the real estate and commercial sectors – as well establish business partnerships with U.S. companies, institutions, and individuals that wish to further their economic objectives." He asserted that his "proposed endeavor is focused on expanding the U.S. real estate market. I intend to buy land and properties to then develop such areas into commercial and residential opportunities . . ." The Petitioner further stated:

In fact, I have already acquired some properties in the state of Florida, including one commercial unit in [REDACTED] Florida, as well as a lot in [REDACTED] – where I already have the permits to build five (5) real estate units. Here, I will use my vast network of contacts in Brazil – including a wide range of investors who have already showed interest in my projects – to attract foreign investment opportunities for the nation.

In addition, the Petitioner explained that he is "interested in developing residential and commercial complexes – specifically a day care facility. More so, I own a few plots of land in the following areas: [REDACTED] [REDACTED] and [REDACTED] – where a substantial number of Latin Americans and Brazilians are looking to invest." He noted that "[t]he first business I will open will be a new car wash station – [REDACTED] . . . I am presently undergoing the negotiation process to open the new car wash unit, which will be located in [REDACTED] Mall – where I have already purchased a lot . . ." The Petitioner also claimed that he plans to open "a store to sell armored vehicles . . . manufactured in the U.S." and that this "U.S.-based company" will "export its services and products" to Brazil and Latin America, "where there is a strong armored vehicle market." He further contended that his proposed endeavor stands to "address the nation's housing crisis," "contribute to both direct and indirect job creation," "incentivize economically depressed areas," and "transform local economies into strong economic regions."

The Petitioner presented the February 2019 "Articles of Organization" for his Florida Limited Liability Company, [REDACTED]. He also provided documentation indicating that [REDACTED] borrowed \$163,777.19 to purchase a \$190,000.00 property in [REDACTED] in March 2019. Additionally, the Petitioner offered an October 2018 agreement between [REDACTED]

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[redacted] and [redacted] “to provide car wash services to unit owners or tenants of Association (collectively ‘Residents’)” at [redacted]’s property in [redacted] Florida.

The record includes information about the economic benefits associated with immigrants, entrepreneurship as a driver of U.S. economic growth, immigrant entrepreneurs’ positive impact on the U.S. economy, foreign investors’ attraction to the U.S. commercial real estate market, the economic effects of commercial real estate development, and our country’s housing affordability crisis. In addition, the Petitioner provided articles discussing immigrants’ contribution to U.S. entrepreneurship, entrepreneurs’ role in creating a more inclusive future economy, the economic contribution of immigrant-launched businesses, the entrepreneurial legacy of immigrants and their children, the lack of affordable urban housing and its cost to the U.S. economy, and increased demand for private capital for real estate investment. He also submitted information about the value of entrepreneurs to the global economy, foreign-born entrepreneurship as an engine for job creation, the positive net fiscal impact of immigrants, the benefit of foreign direct investment to the U.S. economy, housing’s connection to economic growth, real estate as a source of wealth, housing costs’ impact on economic mobility, and the shortage of affordable housing for low-income renters. The record therefore shows that the Petitioner’s proposed work as an entrepreneur has substantial merit.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

The Petitioner argues on appeal that “he is stimulating the national economy through his activities in the high-growth industry of real estate, as well as through other specialized entrepreneurial actions.” He claims that his two companies, [redacted] and [redacted] stand to “incentivize national economic patterns” because of the “ripple effects” they generate “upon commercial activities, the domestic job market, the business industry, and, ultimately, the U.S. economy.” The Petitioner further maintains that his proposed work in the U.S. real estate market offers “investment opportunities for the nation,” serves the “domestic job market . . . because commercially active regions lead to both direct and indirect employment generation,” and addresses our country’s “current shortage of housing.” In addition, he asserts that “[h]is proposed endeavor will . . . bring substantial foreign investment activities to the nation, as Brazil is a key investor within the nation’s real estate sector.” The Petitioner also contends that his undertaking involves advising “foreign entities on how to invest within the U.S. real estate market, thus revitalizing both the nation’s real estate sector and foreign investment activities, and, on a bigger spectrum, the national economy.” Furthermore, the Petitioner states that his undertaking stands to “incentivize the local and national economy by 1) employing and paying U.S. employees, and 2) by supporting local subcontractors.”

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. Although the Petitioner’s statements reflect his intention to operate several businesses and to develop residential and

commercial real estate, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his business and real estate projects to impact or the U.S. economy or real estate market more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not shown that his companies' future staffing levels, support of local contractors, and volume of real estate investment activity stand to provide substantial economic benefits in Florida or the United States. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's financial projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

In addition, although the Petitioner asserts that his company will hire U.S. employees and subcontractors, he has not offered sufficient evidence that the areas where he plans to conduct business and develop real estate are economically depressed, that he would employ a significant population of workers in such areas, or that his endeavor would offer those regions or their population a substantial economic benefit through employment levels or real estate investment. Moreover, while the Petitioner contends that his undertaking will "bring substantial foreign investment activities to the nation," he has not shown that the prospective impact of his development projects represents a significant share of the Florida or U.S. real estate market. For these reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.